

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANGIE CRUZ, I.H., AR'ES KPAKA, and  
RIYA CHRISTIE, on behalf of themselves  
and all others similarly situated,

Plaintiffs, : 14 Civ. 4456 (JSR)  
v. : ORAL ARGUMENT SCHEDULED  
HOWARD ZUCKER, as Commissioner of the : FOR SEPTEMBER 25, 2015  
Department of Health, :  
Defendant. :  
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**DECLARATION OF CHRISTOPHER J. McNAMARA**

I, Christopher J. McNamara, declare as follows:

1. I am associated with the law firm Willkie Farr & Gallagher LLP, counsel to Plaintiffs in the above-captioned class action, and a member in good standing of the bar of this Court. I submit this declaration in support of Plaintiffs' Motion for Summary Judgment.

2. Attached as Exhibit 1 is a true and correct copy of the Plaintiffs' Amended Complaint filed on March 27, 2015.

3. Attached as Exhibit 2 is a true and correct copy of Defendant's Answer to the Amended Complaint filed on July 17, 2015.

4. Attached as Exhibit 3 is a true and correct copy of the Provisional Stipulation and Order of Class Certification, So Ordered on August 22, 2014.

5. Attached as Exhibit 4 is a true and correct copy of Defendant's Responses to Plaintiffs' First Set of Requests for Admission, dated June 12, 2015.

6. Attached as Exhibit 5 are true and correct excerpts of the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015.

7. Attached as Exhibit 6 is a true and correct copy of Exhibit 7 to the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015, which is Bates-stamped D 011111 – D 011114. Appended to Exhibit 6 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Ronald Bass taken on July 30, 2015.

8. Attached as Exhibit 7 is a true and correct copy of Exhibit 5 to the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015, which is Bates-stamped D 017055 – D 017059. Appended to Exhibit 7 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Ronald Bass taken on July 30, 2015.

9. Attached as Exhibit 8 is a true and correct copy of Exhibit 6 to the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015, which is Bates-stamped D 011311 – D 011339. Appended to Exhibit 8 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Ronald Bass taken on July 30, 2015.

10. Attached as Exhibit 9 is a true and correct copy of Exhibit 8 to the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015, which is Bates-stamped D 011539 – D 011545. Appended to Exhibit 9 are true and correct excerpts of the transcript of the deposition of the Rule 30(b)(6) deposition of Ronald Bass taken on July 30, 2015.

11. Attached as Exhibit 10 is a true and correct copy of Exhibit 9 to the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015, which is Bates-stamped D 011364. Appended to Exhibit 10 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Ronald Bass taken on July 30, 2015.

12. Attached as Exhibit 11 is a true and correct copy of Exhibit 10 to the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015, which is Bates-stamped D 017066. Appended to Exhibit 11 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Ronald Bass taken on July 30, 2015.

13. Attached as Exhibit 12 is a true and correct copy of Exhibit 12 to the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015, which is Bates-stamped D 011358. Appended to Exhibit 12 are true and correct excerpts of the Rule 30(b)(6) deposition of Ronald Bass taken on July 30, 2015.

14. Attached as Exhibit 13 is a true and correct copy of Exhibit 14 to the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015, which is Bates-stamped D 07060 – D 017061. Appended to Exhibit 13 are true and correct excerpts of the Rule 30(b)(6) deposition of Ronald Bass taken on July 30, 2015.

15. Attached as Exhibit 14 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Constance Donohue, taken on June 12, 2015.

16. Attached as Exhibit 15 is a true and correct copy of Exhibit 3 (March 2015 Medical Update) to the Rule 30(b)(6) deposition of Constance Donohue, taken on June 12, 2015, which is Bates-stamped D 000239 – D 000263. Appended to Exhibit 15 are true and correct excerpts of the Rule 30(b)(6) deposition of Constance Donohue, taken on June 12, 2015.

17. Attached as Exhibit 16 is a true and correct copy of Exhibit 2 (the Amended Regulation) to the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015. Appended to Exhibit 16 are true and correct excerpts of the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015.

18. Attached as Exhibit 17 is a true and correct copy of Exhibit 10 (Assessment of Public Comment) to the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015, which is Bates-stamped D 000223 – D 000238. Appended to Exhibit 17 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015.

19. Attached as Exhibit 18 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Katherine Truby, taken on June 11, 2015.

20. Attached as Exhibit 19 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015.

21. Attached as Exhibit 20 are true and correct excerpts of the transcript of the deposition of Jason Helgerson, taken on August 14, 2015.

22. Attached as Exhibit 21 are true and correct excerpts of the transcript of the deposition of Foster Gesten, M.D., taken on August 6, 2015.

23. Attached as Exhibit 22 is a true and correct copy of the expert report of Jack Drescher, dated May 1, 2015.

24. Attached as Exhibit 24 is a true and correct copy of Exhibit 2 to the deposition of Alda Osinaga, M.D., taken on August 4, 2015, which is Bates-stamped D 018053 – D 018054. Appended to Exhibit 24 are true and correct excerpts of the transcript of the deposition of Alda Osinaga.

25. Attached as Exhibit 25 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Aasta Thielke, taken on August 7, 2015.

26. Attached as Exhibit 26 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Karen Crotty, M.D., taken on August 12, 2015.

27. Attached as Exhibit 27 is a true and correct copy of the expert report of Johanna Olson, M.D., dated May 1, 2015.

28. Attached as Exhibit 28 is a true and correct copy of Exhibit 39 to the deposition of Constance Donohue, taken on August 13, 2015, which is Bates-stamped D 017214 – D 017215. Appended to Exhibit 28 are true and correct excerpts of the transcript of the deposition of Constance Donohue.

29. Attached as Exhibit 29 is a true and correct copy of Exhibit 6 to the deposition of Alda Osinaga, M.D., taken on August 4, 2015, which is Bates-stamped D 017259. Appended to Exhibit 29 are true and correct excerpts of the transcript of the deposition of Alda Osinaga, M.D.

30. Attached as Exhibit 30 is a true and correct copy of Exhibit 3 to the deposition of Alda Osinaga, M.D., taken on August 4, 2015, which is Bates-stamped D 017231 – D 017232; D017854 – D 017856. Appended to Exhibit 30 are true and correct excerpts of the transcript of the deposition of Alda Osinaga, M.D.

31. Attached as Exhibit 31 is a true and correct copy of Exhibit 19 to the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015, which is a December 1, 2014 email from Kimberly Forte to John Gasior. Appended to Exhibit 31 are true and correct excerpts of the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015.

32. Attached as Exhibit 32 is a true and correct copy of Exhibit 3 to the deposition of Jason Helgerson, taken on August 14, 2015, which is Bates-stamped D 017708 – D 017711. Appended to Exhibit 32 are true and correct excerpts of the transcript of the deposition of Jason Helgerson.

33. Attached as Exhibit 33 is a true and correct copy of Exhibit 21 to the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015, which is Bates-stamped D 033331 – D 033341. Appended to Exhibit 33 are true and correct excerpts of the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015.

34. Attached as Exhibit 34 is a true and correct copy of the Court's Order, dated June 26, 2015.

35. Attached as Exhibit 35 is a true and correct copy of the Memorandum of Law in Support of Defendant's Motion to Dismiss the Amended Class Action Complaint, dated April 17, 2015.

36. Attached as Exhibit 36 is true and correct copy of the Reply Memorandum of Law in Further Support of Defendant's Motion to Dismiss the Amended Class Action Complaint, dated May 15, 2015.

37. Attached as Exhibit 37 is a true and correct copy of Exhibit 12 to the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015, which is a June 2015 Medicaid Update. Appended to Exhibit 37 are true and correct excerpts of the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015.

38. Attached as Exhibit 38 is a true and correct copy of the Expert Report of Ryan Nicholas Gorton, M.D., DABEM, dated May 1, 2015.

39. Attached as Exhibit 39 are true and correct excerpts of the transcript of the deposition of Jack Drescher, M.D., taken on August 11, 2015.

40. Attached as Exhibit 40 is a true and correct copy of Exhibit 7 (WPATH SOC) to the deposition of Alda Osinaga, M.D., taken on August 4, 2015, which is Bates-stamped

D 012240 – D 012359. Appended to Exhibit 40 are true and correct excerpts of the transcript of the deposition of Alda Osinaga, M.D.

41. Attached as Exhibit 41 are true and correct excerpts of the transcript of the deposition of John Williams, Jr., M.D., taken on June 19, 2015.

42. Attached as Exhibit 42 are true and correct excerpts of the transcript of the deposition of Constance Donohue, taken on August 13, 2015.

43. Attached as Exhibit 43 is a true and correct copy of Exhibit 8 to the deposition of Alda Osinaga, M.D., taken on August 4, 2015, which is Bates-stamped D 017670.

Appended to Exhibit 43 are true and correct excerpts of the transcript of the deposition of Alda Osinaga, M.D.

44. Attached as Exhibit 44 is a true and correct copy of Exhibit 14 to the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015, which is Bates-stamped D 017262 – D 017263. Appended to Exhibit 44 are true and correct excerpts of the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015.

45. Attached as Exhibit 45 is a true and correct copy of Exhibit 13 to the deposition of Alda Osinaga, M.D., taken on August 4, 2015, which is Bates-stamped D 017235 – D 017237. Appended to Exhibit 45 are true and correct excerpts of the transcript of the deposition of Alda Osinaga, M.D.

46. Attached as Exhibit 46 is a true and correct copy of Exhibit 43 (Endocrine Society Guidelines) to the deposition of Constance Donohue, taken on August 13, 2015, which is Bates-stamped D 001920 – D 001959. Appended to Exhibit 46 are true and correct excerpts of the transcript of the deposition of Constance Donohue.

47. Attached as Exhibit 47 is a true and correct copy of Exhibit 10 to the deposition of Alda Osinaga, M.D., taken on August 4, 2015, which is Bates-stamped D 001370 – D 001380 . Appended to Exhibit 47 are true and correct excerpts of the transcript of the deposition of Alda Osinaga, M.D.

48. Attached as Exhibit 48 is a true and correct copy of Exhibit 9 to the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015, which is Bates-stamped D 002229 – D 002231. Appended to Exhibit 48 are true and correct excerpts of the transcript of the deposition of the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015.

49. Attached as Exhibit 49 is a true and correct copy of Exhibit 10 to the deposition of Constance Donohue, taken on August 13, 2015, which is Bates-stamped D 017328 – D 017334; D 006310 – D 006335 . Appended to Exhibit 49 are true and correct excerpts of the transcript of the deposition of Constance Donahue.

50. Attached as Exhibit 50 are true and correct excerpts of the transcript of the deposition of Johanna Olson, M.D., taken on August 10, 2015.

51. Attached as Exhibit 51 is a true and correct copy of Exhibit 1 (Notice of Proposed Rule Making) to the Rule 30(b)(6) deposition of Constance Donohue, taken on June 12, 2015. Appended to Exhibit 51 are true and correct excerpts of the transcript the Rule 30(b)(6) deposition of Constance Donohue, taken on June 12, 2015.

52. Attached as Exhibit 52 are true and correct excerpts of the transcript of the deposition of Monica Toohey, taken on August 5, 2015.

53. Attached as Exhibit 53 are true and correct excerpts of Exhibit 4 to the Rule 30(b)(6) deposition of Constance Donohue, taken on June 12, 2015, the New York State Medicaid Program Physician – Procedure Codes, 2015 Version (the “Physician Manual”).

54. Attached as Exhibit 54 is a true and correct copy of Exhibit 13 to the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015, which is Bates-stamped D 011354 – D 011357. Appended to Exhibit 54 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Ronald Bass taken on July 30, 2015.

55. Attached as Exhibit 55 is a true and correct copy of Exhibit 17 to the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015, which is Bates-stamped D 011950 – D 011958. Appended to Exhibit 55 are true and correct excerpts of the transcript of the Rule 30(b)(6) deposition of Ronald Bass, taken on July 30, 2015.

56. Attached as Exhibit 56 are true and correct excerpts of the transcript of the deposition of Ryan Nicholas Gorton, M.D., taken on August 7, 2015.

57. Attached as Exhibit 57 are true and correct excerpts of the transcript of the Conference Call with the Court on August 12, 2015.

58. Attached as Exhibit 58 are true and correct excerpts of the transcript of the deposition of Alda Osinaga, M.D., taken on August 4, 2015.

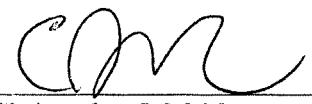
59. Attached as Exhibit 59 is a true and correct copy of a printout from the Endocrine Society's website ([www.endocrine.org/about-us](http://www.endocrine.org/about-us)).

60. Attached as Exhibit 60 is a true and correct copy of Exhibit 16 to the Rule 30(b)(6) deposition of Constance Donohue, taken on August 12, 2015.

61. Attached as Exhibit 61 is a true and correct copy of 18 N.Y.C.R.R. § 533.5.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 28th day of August, 2015



Christopher J. McNamara